Civil Writ Pet. No.2115/1998
D.P.Rangwani & Anr. ***Versus***
Union of India & Ors.
**

Date of Judgment ::: 31/08/06
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Hon'ble the Chief Justice Shri S.N.Jha
Hon'ble Mr. Justice Ajay Rastogi

Shri R.C.Joshi, for the petitioners
Shri V.S.Gurjar, for respondents.

(Per Ajay Rastogi, J.) (Oral)

Instant petition is directed against order dt.09/12/97 (Ex.4) whereby Central Administrative Tribunal, Jaipur Bench, Jaipur rejected original application of petitioners claiming parity of pay scale as admissible to the Assistants working in Central Secretariat based on doctrine of equal pay for equal work.

The petitioners are substantively working as Assistant in Geological Survey of India ("GSI"). They claimed parity of pay scale with the Assistants working in Central Secretariat on the premise that the Assistant working in GSI and Central Secretariat both are similarly placed and are discharging same nature of duties hence entitled for the same pay scale as made admissible to the Assistants working in Central Secretariat on the principle of equal pay for equal work as enshrined in Article 39(d) read with 14 & 16 of the Constitution of India. The Tribunal considered material which the petitioners placed on record and recorded a finding that other than averments made in their original application about fact of performance of duties and functions, no material has been placed in support of their claim

and this fact has beens specifically recorded in para 16 of the order impugned as under : -

> "***16.*** Although the applicants have averred that they are performing the same duties and functions as Assistant in the Central Secretariat, yet they have not placed on record any material to show, what are the precise duties and functions performed by them in the GSI and whether these are the same as performed by the Assistants in the Central Secretariat."

Proceeding on the said premise since petitioners failed to satisfy basic requirement for claiming parity of pay scale on the principles laid down by Apex Court, the Tribunal dismissed their original application vide order impugned dt.09/12/97 (Ex.4). Hence this petition.

Counsel for petitioners submits that nomenclature of posts held by petitioners and so also of the Assistants working in Central Secretariat having same mode of recruitment and discharge of duties & functions; as such are entitled for parity in pay scale on the principles of equal pay for equal work and the respondent also failed to place on record in making out distinction with regard to duties performed by them qua Assistants working in Central Secretariat – in absence whereof, finding recorded by Tribunal in rejecting their claim is not supported by material on record and thus deserves to be set aside.

On the other hand, Counsel for respondents supported the finding recorded by the Tribunal and submits that it was for the petitioners to discharge their burden but they failed to place any material to

show that they also performed identical nature of duties and function of their similar post and cannot be treated differently in the matter of pay scale and even before this Court no material has been placed on record to establish about nature of duties and responsibilities of the Assistants working in Central Secretariat.

We have considered contentions of the Counsel for the parties and with their assistance examined material on record. Doctrine of equal pay for equal work, though not expressly declared by our Constitution to be a fundamental right, is a constitutional goal. Construing Articles 14, 16 & 39 (d) of the Constitution, principle of equal pay for equal work is deducible from those Articles and may be applied to cases of unequal scales of pay based on on no classification or irrational classification though those drawing the different scales of pay do identical work under the same employer. The principle of equal pay for equal work is not an abstract doctrine when applied to Government servants performing similar functions and having identical powers, duties & responsibilities. It always depend upon nature of work done and there may be always a qualitative difference as regards reliability and responsibility. Functions may be the same but responsibilities make a difference.

It is always open for employer to prescribe different pay scales for different posts having regard to qualification, nature of duties and responsibilities of posts and basically principle of equal pay for equal work is applicable among equals

holding same rank, discharging same duties and responsibilities but are differently treated and application of the doctrine would arise where employees are equal in all respect but are denied equality in matter of pay scale.

The Apex Court in ***Shyam Babu Verma Vs. Union of India (1994(2) SCC 521)*** observed as under:-

> "The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of equal pay for equal work should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of equal pay for equal work to them." (para 9)

In ***Mewa Ram Kanojia Vs. All India Institute of Medical Sciences (1989(2) SCC 235***) Apex Court laid down the dicta :

> "***5***. While considering the question of application of principle of equal pay for equal work it has to be borne in mind that it is open to the State to Classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scales but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 & 16 of the Constitution, Equality must be among the equals. Unequal cannot claim equality."

In ***State of Orissa Vs. Balaram Sahu (2003(1) SCC 250***) Apex Court further observed as under :

> "...Though equal pay for equal work is considered to be a concomitant of Article 14 as much as equal pay for unequal work

> will be a negation of that right, equal pay would dependent upon not only the nature or the value of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same but the responsibilities do make a real and substantial difference."

In ***UP State Sugar Corpn. Vs. Sant Raj Singh (AIR 2006 SCW 3013***) observed as under :

> "***20.*** In ***State of Madhya Pradesh and another Vs. Pramod Bhartiya and others (1993(1) SCC 539***) referring to the provisions of Section 2(h) of the Equal Remuneration Act, 1976 this Court stated :
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> > "**13.** It would be evident from this definition that the stress is upon the similarity of skill, effort and responsibility when performed under similar conditions. Further, as pointed out by Mukharji, J. (as he then was) in Federation of **all India Customs and Excise Stenographers (AIR 19888 SC 1291**) the quality of work may vary from post to post. It may vary from institution to institution. We cannot ignore or overlook this reality. It is not a matter of assumption but one of proof. The respondents (original petitioners) have failed to establish that their duties, responsibilities & functions are similar to those of the non technical lecturers in Technical colleges. They have also failed to establish that the distinction between their scale of pay and that of non-technical lecturers working in Technical Schools is either irrational and that it has no basis,

> or that it is vitiated by *malafides*, either in law or in fact (see the approach adopted in Federation case)"

In view of what has been observed (supra), we find that in the instant case, except averments made by petitioners in their original applications, no material has been placed on record before the Tribunal to prima facie establish about nature of duties, responsibilities, qualification & mode of recruitment so as to justify by equating posts of Assistants working in Central Secretariat and GSI. Since petitioners have failed to establish about nature of duties & responsibilities being discharged qua Assistants working in Central Secretariat which may call upon to examine their claim of parity in pay scales on the doctrine of equal pay for equal work. We do not find any error committed by learned Tribunal in passing of the order impugned.

Consequently there is no merit in this writ petition and it is accordingly dismissed. No costs.

(Ajay Rastogi), J. **(S.N.Jha), CJ.**

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